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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/033,169 | 12/27/2001 | Dmitri Pchelintsev | 680.0048USU | 5714 |

7590 06/26/2003

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EXAMINER

WELLS, LAUREN Q

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1617

DATE MAILED: 06/26/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

10/033,169

Applicant(s)

PTCHELINTSEV, DMITRI

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claims 1-33 are pending.

Election/Restrictions

Claims 1-33 are generic to a plurality of disclosed patentably distinct species comprising methods for applying to the skin a composition of the formula in instant claim 1. Possible compounds of the formula include those wherein R1, R2, R3, and R4 are hydrogen atoms; carbohydrates; acyl groups, substituted or unsubstituted, straight chain or branched, fully saturated or having one or more unsaturated bonds, and have from 1-22 carbon atoms; an alkyl group, substituted or unsubstituted, straight chain or branched, fully saturated or having one or more unsaturated bonds, and having from 1-22 carbon atoms; an alkenyl group, substituted or unsubstituted, straight chain or branched, fully saturated or having one or more unsaturated bonds, and have from 1-22 carbon atoms; an alkynyl group, substituted or unsubstituted, straight chain or branched, fully saturated or having one or more unsaturated bonds, and have from 1-22 carbon atoms; a phenyl group, substituted or unsubstituted; a benzyl group, substituted or unsubstituted; a cycloalkyl group, substituted or unsubstituted, and having from 3-8 carbon atoms; a cyloalkenyl group, substituted or unsubstituted, and having from 4-8 carbon atoms, and an oxaalkyl, oxaalkenyl, or oxaalkynyl group having at least one oxygen atom in its backbone structure, substituted or unsubstituted, and straight-chained or branched. Possible methods include treating rosacea, treating telangiectasia, treating dermatological signs of aging, improving the aesthetic appearance of skin, treating sensitive skin, treating itch, treating irritation, treating inflammation, treating loss of tone, treating redness, treating allergic responses, treating combination skin, treating blemishes, treating flushing, and treating blushing. Applicant is

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required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Applicant is respectfully request to elect a single species of the formula of instant claim 1 and a single method of use.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Charles Ruggiero on 6/2/03 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw

June 18, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

6/24/03